

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VERSATA SOFTWARE, INC., ET AL.

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vs.

CASE NO. 2:07-CV-153-CE

SAP AMERICA, INC. AND SAP AG

ORDER

Pending before the court are the defendants SAP America, Inc. and SAP AG's (collectively, "SAP") supplemental motion for judgment as a matter of law ("JMOL") on damages issues (Dkt. No. 312), motion for remittitur or new trial on damages (Dkt. No. 348), and renewed motion for JMOL on damages (Dkt. No. 350). In light of the Federal Circuit's recent decisions on damages, including *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010); *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301 (Fed. Cir. 2009), and *Uniloc USA, Inc. v. Microsoft Corp.*, No. 03-CV-0440 (Fed. Cir. January 4, 2011), the court is persuaded that it erred when it admitted Mr. Bakewell's testimony and his damages model. That error affected SAP's substantial rights. The court, therefore, orders a new trial on damages.

Versata may serve a supplemental expert report on damages by February 25, 2011, and SAP may serve a supplemental rebuttal report by March 18, 2011. Any additional fact and expert discovery shall be completed by April 15, 2011. The case is set for pre-trial conference on April 25, 2011 at 1:30 p.m., and jury selection shall be held on April 29, 2011 at 9:00 a.m.

SAP's motion for a new trial on damages is GRANTED. SAP's motions for JMOL are DENIED as moot.

SIGNED this 6th day of January, 2011.



Charles Everingham IV
CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE